**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**F.A.O.No.1058 of 1992**

**Date of decision : 20.9.2006.**

Amar Singh & Anr.

.....Petitioners.

Versus

Natha Ram & Ors.

.....Respondents.

**CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present : Mr. G.S. Bawa, Advocate
for the appellants.

None for the respondents.

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**VINOD K. SHARMA,J.( ORAL )**

This order shall dispose of two appeals bearing No.876 and 1058 of 1992. For the sake of convenience, facts are being taken from FAO No. 1058 of 1992.

The present appeals have been filed against a common award passed by the Motor Accident Claims Tribunal, Sirsa vide which the claim petitions filed by the claimants were dismissed.

It was alleged in the claim petition that on 18.6.1990 at about 2/2.30 p.m. Manjit Singh was coming from Ellanabad to Rania on a brand new scooter of Bajaj Super make to which even the registration number had not been allotted. The scooter was driven by one Naveen Kumar. Tarsem Singh was also one of the two pillion riders. When the scooter crossed Ellenabad by about one kilometer, then jeep No. RSF-

1978 allegedly came from the opposite side. This jeep was being driven by respondent No.1 Natha Ram in rash and negligent manner and it struck against the scooter by going on the wrong side of the road. As a result of this impact, the scooterists fell down on the road. While Manjit Singh died at the spot, Tarsem Singh received multiple injuries. The First Information Report No.87, dated 19.6.1990 for causing this accident under Sections 279, 337, 338 and 304-A IPCwas registered at P.S. Ellanabad.

Claim petition No.23 of 1990 was brought by Amar Singh and Bharawan Bai, who are the parents of the deceased Manjit Singh. They claimed that they were solely dependent on their son Manjit Singh (deceased ), who was a bachelor and aged about 21 years at the time of this mishap and was earning Rs.1500/- per month by doing the job of an agricultural labourer. They sought compensation of Rs. two lacs, under Section 166 of the Motor Vehicle Act, 1988 ( for short 'the Act') and interim compensation in the sum of Rs. 25,000/- under Section 140 of the Act. It was claimed that Natha Singh respondent No.1 was erring driver and Ram Sarup respondent No.2 was owner of jeep No. RSF-1978 and, therefore, they were liable to pay compensation to the claimants. It was also mentioned that jeep was not insured with any insurance company at the time of accident.

In Claim Petition No. 24 of 1990, which was instituted by Tarsem Singh claiming compensation in the sum of Rs. three lacs under Section 166 of the Act and interim compensation in the sum of Rs. 15,000/- under section 140 of the Act on account of multiple injuries sustained by

him in this accident. He was said to be aged about 23 years and earning a monthly income from the shop of Halwai of Rs.2500/- to Rs./3000/- per month.

The claim petitions were opposed by the respondents by filing joint written statement. It was stated that the jeep No. RSF-1978 and respondent No.1 Natha Ram were not at all involved in this accident and thus there is no question of giving any award in favour of the appellants in both the claim petitions. It was also claimed that Amar Singh and Bharawan Bai were not dependent upon Manjit Singh as he was minor and earning nothing. It was also claimed that petitions were bad for non-joinder of necessary parties and that Naveen Kumar, who was driving the scooter, was not in control of his vehicle with two pillion riders thereon and he did not know driving. The claim petitions were also claimed to be time barred. It was further claimed that compensation claimed was on a very high side.

On the pleadings of the parties, following issues were framed in claim petition No. 23 of 1990 :-

"1. Whether Manjit Singh died in the rash and negligent driving of jeep No. RSF-1989, driven by respondent No.1 ? OPP
2. Whether the petitioners are legal heirs of Manjit Singh deceased ? OPP
3. To what amount of compensation, petitioners are entitled to ? OPP
4. Whether the petition is not within time ? OPR
5. Relief."

In claim petition No.24 of 1990 the following issues were framed :-

"1. Whether Tarsem Singh was injured because of rash and negligent driving of jeep No. RSF-1978 by Natha Singh respondent No.1, owned by Ram Sarup respondent ? OPP

2. To what amount, the petitioner is entitled to claim as compensation ? OPP

3. Whether the petition is bad for non-joinder of the necessary parties ? OPR

4. Whether the petition is not within time ?OPR

5. Relief."

The learned Motor Accident Claims Tribunal on issue No.1, after considering the evidence led by PW7 Tarsem Singh as well as other witnesses produced by the claimants came to the conclusion that the claimants-appellants have failed to establish that the accident was caused by Natha Ram respondent No.1. In order to reach this conclusion, reference was made to Ex.R1, copy of the statement made by Tarsem Singh under Section 161 Cr.P.C. on 27.7.1990 i.e. during the investigation of the Criminal case. The Tribunal noticed that even though the said statement was recorded after about one month and ten days of the accident, Tarsem Singh appellant did not allege therein that jeep No. RSF-1978 was being driven by Natha Ram respondent No.1. Thus, the learned Tribunal came to the conclusion that it was a case of hit and run and the story that jeep No. RSF-1978 was being driven by respondent No.1 Natha Ram was concocted after 27.7.1990 for claiming compensation.

The contention of the learned counsel for the appellants here that the statement under Section 161 Cr.P.C. could be used only for contradicting a witness and not otherwise, was duly considered by the learned Tribunal holding that Sh. Tarsem Singh was confronted with the statement and, therefore, it was held that same was used to impeach the veracity of alleged Tarsem Singh.

The learned Tribunal also noticed that F.I.R. No.87 dated 19.6.1990 with regard to the accident was lodged on the statement of Naveen Kumar, who was driving the scooter, on which Manjit Singh (deceased) and Tarsem Singh were pillion riders. In the FIR Naveen Kumar had merely given the colour of the jeep, which caused the accident and he did not mention even the registration number. It was also not disclosed, who was driving the jeep. Thus, the learned Tribunal came to the conclusion that on the date of accident, Tarsem Singh PW7 did not even know about the registration number of the jeep and so also the name of its driver.

The learned Tribunal further noticed that the claimants-appellants herein did not examine Naveen Kumar, who was admittedly driving the scooter at the time of alleged accident. In the FIR it was further mentioned that the accident was witnessed by one Satnam Singh resident of Rania. Even he was not examined in the witness box. Total case of the appellants was based on the statement of Tarsem Singh PW7 which,in fact, stood eroded on account of the fact that his statement under section 161 Cr.P.C. was recorded as late as after 40 days of the accident and even in that statement he did not disclose the name of the person, who was driving the jeep. In these circumstances, the learned Tribunal came to the conclusion

that non-examination of Naveen Kumar and Satnam Singh in the witness box goes against the appellants. The factum that name of the driver and registration number of the jeep was not disclosed in the FIR was even admitted by PW4 H.C. Dharampaul. He further admitted that during the investigation, before 27.7.1990 the police had no clue about the number of the jeep and about its driver. Accordingly, the learned Tribunal came to the conclusion that there was no evidence to connect jeep bearing No. RSF-1978 with the accident and accordingly issue No.1 was decided against the appellants-claimants and in view of the finding of issue No.1, both the claim petitions were dismissed.

The learned counsel for the appellants submits that in para No.3 of the preliminary objections, the respondents No. 1 & 2 had categorically alleged that Sh.Naveen Kumar was driving the vehicle in a wrong manner and he did not know driving. From this the learned counsel for the appellants wish to draw inference that the factum of accident was admitted and, therefore, it was for the driver of the jeep to prove his non-involvement in the accident by producing cogent evidence that he was not driving the jeep at the time of accident.

I have considered this contention of the learned counsel and find no force in the same. Even if preliminary objection is taken into consideration, there is specific plea made that Naveen Kumar,chose not to appear in the witness box, though, admittedly he was driving the scooter according to the appellants. The learned Tribunal on appreciation of evidence has given a categorical finding that the appellants-claimants have failed to connect the jeep or its driver with the accident and, therefore, decided issue No.1 against the appellants-claimants.

It may be noticed that the statement of Tarsem Singh under Section 161 Cr.P.C. was recorded on 27.7.1990 i.e. after one month and ten days of the accident. In the said statement also Sh.Tarsem Singh did not allege that jeep No. RSF-1978 was being driven by Natha Ram respondent No.1. The effect of this is that the claimants were not sure as to whether the said jeep was involved or not and, therefore, no compensation could be granted. This view of mine finds support from the judgment of this Court in the case of **Kartar Singh Vs. Udham Singh Shani and another** ( 1987-2) P.L.R. 563.

The learned Tribunal was also right in coming to the conclusion that when the name of the driver as well as number of the offending vehicle were not mentioned in the FIR, there was no convincing evidence except the statement of Tarsem Singh, which was certainly an improvement as he had failed to mention these facts in his statement under Section 161 Cr.P.C. It could not be held that the said jeep was involved in the accident in view of the law laid down by this Court in the case of **Surinder Kaur and others Vs. Raj Kumar and others** (1993-3) PLR 709.

The finding recorded by the learned Tribunal does not suffer from any illegality nor can be said to be perverse or based on no evidence which may call for any interference by this Court. Accordingly, finding on issue No.1 is affirmed and the appeals are dismissed being without any merit.

September 20,2006 **( VINOD K. SHARMA )**
'sp' **JUDGE**